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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

LESLIE SENOREN, an individual, on
behalf of herself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

AIR CANADA CORPORATION, a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE No. **20STCV13942**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: July 9, 2021

Hearing Time: 11:00 a.m.

Judge: Hon. Amy D. Hogue

Dept: SS-7

Action Filed: April 9, 2020

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff Leslie Senoren (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant Air
4 Canada (“Defendant”), and seeks entry of an order: (1) preliminarily approving the proposed settlement
5 of this class action with Defendant; (2) for settlement purposes only, conditionally certifying the Class,
6 which is comprised of “all individuals who worked for Defendant in California as non-exempt
7 employees at any time during the Class Period”; (3) provisionally appointing Plaintiff as the
8 representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug,
9 and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the
10 Class; (5) approving the form and method for providing class notice; (6) directing that notice of the
11 proposed settlement be given to the class; (7) appointing Simpluris as Settlement Administrator, and
12 (8) scheduling a final approval hearing date to consider Plaintiff’s motion for final approval of the
13 settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys' fees and
14 expenses.

15 Plaintiff and Defendant (collectively the “Parties”) have reached a full and final settlement of
16 the above-captioned action, which is embodied in the Class Action Settlement Agreement
17 ("Agreement") filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
18 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
20 Nine Hundred Thousand Dollars (\$900,000), as set forth in the Agreement. The Gross Settlement
21 Amount will settle all issues pending in the Action between the Parties and will be made in full and
22 final settlement of the Released Class Claims, consisting of the all payments of Settlement Shares to
23 the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment,
24 Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the PAGA
25 Payment. The Gross Settlement Amount does not include the employer’s share of payroll taxes which
26 will be separately paid by Defendant. The Settlement is all-in with no reversion to Defendant and no
27 _____

28 ¹ Capitalized terms shall have the same meaning as defined in the Agreement.

1 need to submit a claim form. Decl. Nordrehaug at ¶3.

2 On February 18, 2021, the Parties participated in an all-day mediation session presided over by
3 Mark Rudy, a respected and experienced mediator of wage and hour class actions. At the conclusion
4 of the mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
5 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
6 substantial monetary payment, and there are substantial litigation and class-certification risks.
7 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
8 and enter the proposed order submitted herewith.

9 **II. DESCRIPTION OF THE SETTLEMENT**

10 The Gross Settlement Amount is Nine Hundred Thousand Dollars (\$900,000). (Agreement at
11 ¶ I(S).) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
12 payment of the Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class Counsel
13 Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) the Class Representative
14 Service Payment to Plaintiff; and (5) the PAGA Payment. (Agreement at ¶ III(B)-(C).) The Gross
15 Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ III(A).) The
16 Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ III(A).)
17 Decl. Nordrehaug at ¶15.

18 Following final approval, Defendant shall fund the Gross Settlement Amount within thirty (30)
19 days of the Effective Date. (Agreement at ¶ III(E)(9).) The Settlement Shares to Participating Class
20 Members will be mailed by the Settlement Administrator within 15 calendar days after the funding of
21 of the Gross Settlement Amount. (Agreement at ¶ III(E)(9).) Decl. Nordrehaug at ¶16.

22 The Net Settlement Amount shall equal the net amount available for payment to the Class after
23 deducting the Court-approved amounts for the (1) Class Counsel Fees Payment; (2) Class Counsel
24 Litigation Expenses Payment; (3) Class Representative Service Payment; (4) the Settlement
25 Administration Expenses, and (5) the PAGA Payment from the Gross Settlement Amount. (Agreement
26 at ¶ I(U).) The Net Settlement Amount will be distributed as the Settlement Shares to the Class
27 Members who do not timely request exclusion ("Participating Class Members"). (Agreement at ¶¶ I(X)
28 and III(C)(1).) The Settlement Share will be calculated as follows: (a) the Settlement Administrator

1 shall then divide the Net Settlement Amount by the total number of weeks included in the dates of
2 employment to determine a dollar amount per week ("Weekly Rate"); and (b) the Settlement
3 Administrator shall then take the number of weeks worked by each Participating Class Member and
4 multiply it by the Weekly Rate to calculate their Settlement Share. (Agreement at ¶ III(C)(2).)
5 Workweeks will be based on Defendant's records, however Class Members will have the right to
6 challenge the number of workweeks. Decl. Nordrehaug at ¶17.

7 Class Members may choose to opt-out of the Settlement by following the directions in the Class
8 Notice. (Agreement at ¶ III(E)(3), Ex. A.) All Class Members who do not "opt out" will be deemed
9 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
10 Settlement Share. All Aggrieved Employees, including those who submit an opt-out request, will still
11 be paid their allocation of the PAGA Payment and will remain bound by the release of the PAGA
12 Released Claims regardless of their request for exclusion. (Agreement at ¶ III(E)(3)(c).) Finally, the
13 Class Notice will also advise the Class Members of their right to object to the Settlement and/or dispute
14 their workweeks. (Agreement at ¶ III(E)(3), Ex. A.) Decl. Nordrehaug at ¶18.

15 A Participating Class Member must cash his or her Settlement Share check within 180 days
16 after it is mailed. (Agreement at ¶ III(E)(10).) Any settlement checks not cashed within 180 days will
17 be voided and any funds from such uncashed checks will be paid to the California State Controller's
18 Unclaimed Property Fund in the name of the Participating Class Member. (Agreement at ¶ III(E)(10).)
19 Decl. Nordrehaug at ¶19.

20 Based upon the lowest bid received from qualified vendors, the Parties have agreed to use
21 Simpluris as the Settlement Administrator. (Agreement at ¶ III(D).) From the Gross Settlement
22 Amount, the Settlement Administrator shall be paid for the expenses of effectuating and administering
23 the Settlement in an amount not to exceed \$10,000. (Agreement at ¶ III(B)(4).) Decl. Nordrehaug at
24 ¶20.

25 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
26 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
27 at ¶ III(B)(2).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
28 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ III(B)(2).) Subject

1 to Court approval, the Agreement provides for a payment of no more than \$10,000 to Plaintiff as the
2 Class Representative Service Payment. (Agreement at ¶ III(B)(1).) Decl. Nordrehaug at ¶21.

3 Subject to Court approval, Twenty Thousand Dollars (\$20,000) will be paid from the Gross
4 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
5 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
6 the PAGA Payment shall be allocated as follows: \$15,000 to the LWDA (the "LWDA Payment") as
7 the LWDA's share of the settlement of civil penalties pursuant to the PAGA, and \$5,000 will be
8 distributed to the Aggrieved Employees based on their respective weeks worked during the PAGA
9 Period. (Agreement at ¶ III(B)(3).) As set forth in the accompany proof of service, the LWDA has
10 been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

11 **III. CASE BACKGROUND**

12 On January 6, 2020, Plaintiff serves a notice pursuant to PAGA on Defendant and the Labor
13 Workforce Development Agency alleging violations of the Labor Code by the Defendant. Decl.
14 Nordrehaug at ¶7.

15 On April 9, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the
16 State of California, County of Los Angeles (the "Action"). The Action asserted class claims for: (1)
17 unfair competition in violation of Cal. Bus & Prof. Code §§ 17200, *et seq.*; (2) failure to pay minimum
18 wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (3) failure to pay overtime
19 wages in violation of Cal. Labor Code § 510; (4) failure to provide required meal periods in violation
20 of Cal. Labor Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of Cal.
21 Labor Code §§ 226.7 and 512; (6) failure to timely pay earned wages in violation of California Labor
22 Code § 204(d); (7) failure to reimburse employees for required expenses in violation of California
23 Labor Code § 2802; (8) failure to provide accurate wage statements in violation of Cal. Labor Code
24 §226; (9) failure to provide wages at termination in violation of Cal. Lab. Code § 201, 202, and 203;
25 and, (10) violation of the Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* ("PAGA"),
26 based upon the alleged Labor Code violations. Decl. Nordrehaug at ¶8.

27 On June 30, 2020, Defendant filed a Notice of Appearance in the Action. On May 7, 2021,
28 Defendant denied the allegations and maintains many affirmative defenses to the Action. Decl.

1 Nordrehaug at ¶9.

2 Over the course of litigation, the Parties engaged in the investigation of the claims, including
3 production of documents, class data, and other information, allowing for the full and complete analysis
4 of liabilities and defenses to the claims in this Action. The information obtained by Plaintiff included:
5 (1) data as to employees and payperiods; (2) Payroll data for employees; (3) work time data concerning
6 hours worked and time punch data; (4) Defendant's employee wage and hour policies; (5) the
7 employment files for the Plaintiff; and, (6) samples of wage statements provided by Defendant.
8 Plaintiff and Defendant agreed to discuss resolution of the Action through a mediation. Decl.
9 Nordrehaug at ¶10.

10 Prior to mediation, the Parties engaged in the above investigation and the exchange of
11 documents and information in connection with the Actions. On February 18, 2021, the Parties
12 participated in an all-day mediation presided over by Mark Rudy, Esq., a respected and experience
13 mediator of wage and hour class actions. Following the mediation, each side, represented by its
14 respective counsel, were able to agree to settle the Action based on a mediator's proposal which was
15 memorialized in the form of a Memorandum of Understanding signed on or about March 9, 2021. At
16 all times, the negotiations were arm's length and contentious. Decl. Nordrehaug at ¶11.

17 The Parties continued to negotiate the terms of the settlement and prepared the final Agreement
18 which was signed by the Parties and is now presented to this Court for preliminary approval.
19 Accordingly, for purposes of this Settlement, the "Class" is defined as "all individuals who worked for
20 Defendant in California as non-exempt employees at any time during the Class Period." (Agreement
21 at ¶ I(C).) The "Class Period" is from April 09, 2016 to May 24, 2021. (Agreement at ¶ I(J).)
22 Defendant has represented that the Class consists of 319 Class Members. Decl. Nordrehaug at ¶12.

23 Although a settlement has been reached, Defendant denies any liability or wrongdoing of any
24 kind associated with the claims alleged in the Action and further deny that, for any purpose other than
25 settlement, the Action are appropriate for class treatment. Defendant contends, among other things, that
26 it has correctly compensated the Class Members and complied at all times with the California Labor
27 Code, applicable Wage Order, and all other laws and regulations. Further, Defendant contends that
28 class certification would be inappropriate for any reason other than for settlement. Decl. Nordrehaug

1 at ¶13.

2 Plaintiff contends that Defendant violated California wage and hour laws. Plaintiff further
3 contends that the Action is appropriate for class certification on the basis that the claims meet the
4 requisites for class certification. Without admitting that class certification is proper, Defendant has
5 stipulated that the above Class may be certified for settlement purposes only. (Agreement at ¶ II(D).)
6 The Parties agree that certification for settlement purposes is not an admission that class certification
7 would be proper if the class certification issue were litigated. Further, the Agreement is not admissible
8 in this or any other proceeding as evidence that the Class could be certified absent a settlement. Solely
9 for purposes of settling the Action, the Parties stipulate and agree that the requisites for establishing
10 class certification with respect to the Class are satisfied. Decl. Nordrehaug, ¶ 13.

11 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
12 the course of over a year, Class Counsel has diligently evaluated the Class Members' claims against
13 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
14 access to necessary information for the Class. In addition, Class Counsel previously negotiated
15 settlements with other employers in actions involving nearly identical issues and analogous defenses.
16 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
17 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
18 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
19 circumstances, including the risk of significant delay, defenses asserted by Defendant, Defendant's
20 financial circumstances and potential appellate issues. Decl. Nordrehaug at ¶ 14.

21 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO**
22 **GRANT PRELIMINARY APPROVAL**

23 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
24 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
25 California "[p]ublic policy generally favors the compromise of complex class action litigation."
26 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
27 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
28 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,

1 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
2 denied, 459 U.S. 1217 (1983)).

3 Preliminary approval is the first of three steps that comprise the approval procedure for
4 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
5 members. The third step is a final settlement approval hearing, at which evidence and argument
6 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
7 members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
8 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

9 The primary question presented on an application for preliminary approval of a proposed class
10 action settlement is whether the proposed settlement is “within the range of possible approval.”
11 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
12 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
13 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
14 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
15 “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining.”
16 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
17 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
18 determination that settlement was “fair, reasonable and adequate” where the settlement “provided
19 valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have
20 faced if she proceeded to litigate her case.’”); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
21 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
22 settlement is given to the class members and a final settlement hearing is held by the Court.

23 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

24 The approval of a proposed settlement of a class action suit is a matter within the broad
25

26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

1 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
2 Preliminary approval does not require the trial court to answer the ultimate question of whether a
3 proposed settlement is fair, reasonable and adequate. That final determination is made only after notice
4 of the settlement has been given to the class members and after they have been given an opportunity
5 to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's*
6 *Federal Practice* §§23.80 - 23.85 (2003).

7 In considering a potential settlement for preliminary approval purposes, the trial court does not
8 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
9 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
10 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
11 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
12 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
13 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
14 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
15 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
16 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
17 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
18 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

19 With regard to class action settlements, the opinions of counsel should be given considerable
20 weight both because of counsel’s familiarity with this litigation and previous experience with cases
21 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
22 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
23 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a
24 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
25 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural*
26 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

27 **B. Factors To Be Considered In Granting Preliminarily Approval**

28 A number of factors are to be considered in evaluating a settlement for purposes of preliminary

1 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)
2 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
3 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
4 or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust*
5 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather
6 all factors should be considered. The analysis has been summarized as follows:

7 If the proposed settlement appears to be the product of serious, informed, noncollusive
8 negotiations, has no obvious deficiencies, does not improperly grant preferential
9 treatment to class representatives or segments of the class, and falls within the range of
possible approval, then the court should direct that notice be given to the class members
of a formal fairness hearing, at which evidence may be presented in support of and in
opposition to the settlement.

10 *Manual of Complex Litigation, Second* § 30.44, at 229.

11 Here, the Settlement meets all of these criteria for preliminary approval.

12 **1. The Settlement is the Product of Serious, Informed and**
13 **Arm's Length Negotiations by Experienced Counsel**

14 This settlement is the result of extensive and hard-fought litigation as well as negotiations
15 before an experienced and well-respected mediator. Defendant has expressly denied and continue to
16 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
17 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
18 Class Claims of the Class in accordance with this Settlement upon full funding of the Settlement.³

19 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
20 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
21 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar

22
23 ³ The release applicable to the Class is tethered to allegations in the Action and the "Released Class
24 Claims" are "any and all class claims pled or which could have been pled under state or federal law in
25 the operative complaint based on the factual allegations contained in the operative complaint or any
26 amendments thereto which occurred during the Class Period Including claims for failure to pay wages
27 for all hours worked, failure to pay overtime, failure to provide meal and rest breaks or premium
28 payments related thereto, failure to timely pay wages during employment or upon termination, failure
to provide accurate itemized wage statements, failure to reimburse business expenses, and all derivative
and related claims including penalties under the Private Attorneys General Act ("PAGA") on behalf
of the Aggrieved Employees, and unfair competition claims based on the aforementioned claims."
(Agreement at ¶ III(F)(1).)

1 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
2 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
3 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
4 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
5 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

6 The Parties attended an arms-length mediation session with Mark Rudy, a respected and
7 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
8 for the mediation, Defendant provided Class Counsel with necessary information for the members of
9 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiff
10 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
11 a mediation brief and damage valuation to the Mediator. At the conclusion of the all-day mediation,
12 the Parties agreed to this Settlement. The final settlement terms were negotiated and set forth in the
13 Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff
14 and Class Counsel believe that this Settlement is fair, reasonable and adequate.

15 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
16 Nine Hundred Thousand Dollars (\$900,000). The Settlement is all-in with no reversion to Defendant
17 and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

18 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
19 the course of over a year, Class Counsel has diligently evaluated the Class Members' claims against
20 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
21 access to necessary information for the Class. In addition, Class Counsel previously negotiated
22 settlements with other employers in actions involving nearly identical issues and analogous defenses.
23 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
24 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
25 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
26 circumstances, including the risk of significant delay, defenses asserted by Defendant, Defendant's
27 financial circumstances and potential appellate issues. Decl. Nordrehaug at ¶ 14.

28 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying

1 this Action against Defendant through possible appeals which could take several years. Class Counsel
2 has also taken into account the uncertain outcome and risk of litigation, especially in complex class
3 actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of
4 proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
5 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
6 interest of the Class Members. Decl. Nordrehaug, ¶ 23.

7 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
8 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
9 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
10 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
11 influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

12 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within**
13 **the Range for Approval**

14 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
15 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
16 receive payment according to the same formula. (Agreement at ¶ III(C)(2).) The Gross Settlement
17 Amount provides an average value of \$2,821 per Class Member and \$50 per pay period, and after
18 deductions, the Net Settlement Amount provides an average recovery of \$1,692 per Class Member and
19 \$30 per pay period. Decl. Nordrehaug, ¶6.

20 The calculations to compensate for the amount due to the Class Members at the time this
21 Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of
22 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
23 putative class members and determined the potential maximum damages for the class claims. For the
24 Class, Plaintiff determined that the damages for unpaid wages due to rounding was \$223,141, the
25 maximum potential meal period damages were estimated to be \$651,598 based on a one missed meal
26 period per week, the maximum rest period damages were estimated to be \$651,598 based upon
27 reasonable assumption of one violation per week, and the maximum damages for unreimbursed expenses
28 for cell phone usage was \$248,819. In total, the damages for the Class were calculated to have a

1 maximum total value of \$1,775,156. In addition, Plaintiff calculated that the maximum value of the
2 waiting time penalties were \$539,092 and the maximum value of the wage statement penalties were
3 \$586,100, however, these wage statement and waiting time penalties claims potentially have a much
4 smaller value, even if damages were awarded, to the extent that they are derivative of the meal and rest
5 break claims.⁴ Decl. Nordrehaug, ¶6.

6 Consequently, the Gross Settlement Amount of \$900,000 represents 50% of the value of the
7 potential damages at issue for the Class in this case, and 31% of the combination of damage and
8 penalties for the Class, assuming these amounts could all be proven in full at trial.⁵ The above
9 maximum calculations should then be adjusted in consideration for both the risk of certification and
10 the risk of establishing class-wide liability on all claims. In addition, the airline industry, and in
11 particular this Canadian airline which did not get United States airline assistance, was very hard-hit
12 financially by the pandemic. Given the amount of the Settlement as compared to the potential value
13 of the claims, the Settlement is most certainly fair and reasonable.⁶ Clearly, the goal of this litigation
14 has been met. Decl. Nordrehaug, ¶6.

15 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
16

17 ⁴ Importantly, while Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections
18 203 and 226, Plaintiff recognized that these claims were subject to various defenses asserted by
19 Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages
20 for meal or rest periods or other wages were owed given Defendant's position that Plaintiff was properly
21 compensated. See *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no
22 willful failure to pay wages if the employer and employee have a good faith dispute as to whether and
23 when the wages were due."). Additionally, Courts have held that violations of the meal and rest period
24 regulations, which require payment of a "premium wage" for each improper meal period, do **not** give
25 rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's China Bisto, Inc.*, 245 Cal. App.
26 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018).
27 As a result, the viability of Plaintiff's claims on these theories is uncertain.

28 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the
PAGA claim in this discussion. The PAGA claim is addressed in the Decl. Nordrehaug at ¶ 33.

⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
v. W.W. Granger, Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial.")

1 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
2 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
3 asserted that Defendant's practices complied with all applicable Labor laws. The airline employees
4 were also covered by a Collective Bargaining Agreement which eliminated overtime claims and
5 impacted meal and rest break practices and recording, making proof of these claims highly uncertain.
6 Defendant also asserted that all or some of the claims were barred by federal preemption applicable to
7 the airline's practices. Defendant argued that the off-the-clock work did not occur as it was against
8 company policy and that any rounding was neutral and therefore lawful. Defendant also contends that
9 its meal and rest period policies fully complied with California law. Defendant also contended that the
10 records show that meal period premiums were in fact paid showing their compliance. Finally,
11 Defendant could also argue that the recent Supreme Court decision in *Brinker v. Superior Court*, 53
12 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to the
13 meal and rest period claims. Defendant also argues that it acted in good faith and without willfulness,
14 which if accepted would negate the claims for waiting time penalties and/or inaccurate wage
15 statements. In fact, under the current state of the law, it is questionable whether these penalties could
16 be awarded at all based upon the alleged meal and rest period violations. If successful, Defendant's
17 defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that
18 these defenses could be overcome, Defendant maintains these defenses have merit and therefore present
19 a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

20 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
21 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
22 Defendant argued that the individual experience of each putative class member varied with respect to
23 the claims. Defendant could also contest class certification by arguing injury and good faith were case
24 by case determinations that precluded class certification. The auto-deduct system for meal periods
25 created problems for certification as Courts have held. Plaintiff is aware of cases where class
26 certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
27 (2019) (denying certification of meal and rest break claims). Defendant also contended that individual
28 differences in work experiences not only impacted damages but would also impact certification.

1 Finally, even if class certification was successful, as demonstrated by the California Supreme Court
2 decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to
3 overcome for a class wide recovery even where the class has been certified. While other cases have
4 approved class certification in wage and hour claims, class certification in this action would have been
5 hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

6 After arm's length negotiations between experienced and informed counsel, the Parties
7 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
8 \$900,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

9 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
10 and likely duration of further litigation likewise favors the settlement. Regardless of
11 how this Court might have ruled on the merits of the legal issues, the losing party likely
12 would have appealed, and the parties would have faced the expense and uncertainty of
13 litigating an appeal. 'The expense and possible duration of the litigation should be
14 considered in evaluating the reasonableness of [a] settlement.'"

15 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
16 (9th Cir. 2000)).

17 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 18 **Class Representatives or Segments Of The Class**

19 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
20 not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Class
21 Members are all determined under a neutral methodology. Each Participating Class Member who will
22 receive the same opportunity to participate in and receive payment through a neutral formula that is
23 based upon the pay periods worked by that individual. Decl. Nordrehaug, ¶4.

24 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
25 the service performed and for the risks undertaken on behalf of the Class. (Agreement at ¶ III(B)(1).)
26 Plaintiff performed her duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. At
27 this stage, the requested service award of not to exceed \$10,000 is well within the accepted range of
28 awards for purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
\$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
(approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*

1 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service
2 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
3 *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
4 \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
5 representatives to compensate the employees for the time and effort expended on the case, for the risk
6 of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive
7 to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

8 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
9 **Preliminary Approval Of The Settlement**

10 The stage of the proceedings at which this Settlement was reached also militates in favor of
11 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
12 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
13 Members' claims before the Action was filed. Class Counsel conducted a thorough review and analysis
14 of the relevant documents and data with the assistance of an expert. Class Counsel was also
15 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
16 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
17 possessed sufficient information to make an informed judgment regarding the likelihood of success on
18 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

19 Based on the foregoing data and their own independent investigation and evaluation, Class
20 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
21 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
22 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
23 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
24 parties possessed sufficient information to make an informed judgment regarding the likelihood of
25 success on the merits and the results that could be obtained through further litigation. Decl.
26 Nordrehaug at ¶29.

27 Here, Class Counsel was in sufficient position to evaluate the fairness of this Settlement because
28 Class Counsel received all necessary information which was evaluated with the assistance of an expert,

1 and also performed independent investigations and due diligence to confirm the accuracy of the
2 information supplied by Defendant.

3 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY**

4 Plaintiff contends that the proposed settlement meet all of the requirements for class
5 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
6 Court may appropriately approve the Class as defined in the Agreement. This Court should
7 conditionally certify the Class for settlement purposes only, defined as follows:

8 All individuals who worked for Defendant in California as non-exempt employees at
9 any time during the Class Period.

10 (Agreement at ¶ I(C).)

11 The Class Period is from April 9, 2016 to May 24, 2021. (Agreement at ¶ I(J).)

12 **A. California Code of Civil Procedure § 382**

13 Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil
14 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
15 class certification is appropriate as follows:

16 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
17 of a common or general interest, of many persons, or when the parties are numerous,
18 and it is impracticable to bring them all before the court....” The party seeking
19 certification has the burden to establish the existence of both an ascertainable class and
20 a well-defined community of interest among class members. (*citations omitted*). The
21 “community of interest” requirement embodies three factors: (1) predominant common
22 questions of law or fact; (2) class representatives with claims or defenses typical of the
23 class; and (3) class representatives who can adequately represent the class.

24 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004).

25 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
26 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
27 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
28 settlement only. (Agreement at ¶ II(D).)

29 **B. The Proposed Class Is Ascertainable and Numerous**

30 Plaintiff brings this action on behalf of a Class of individuals during the applicable Class Period.
31 Plaintiff asserts that all of these individuals are ascertainable because the class members can readily be
32 determined through examination of Defendant’s files. Given that the Class consists of approximately

1 319 members, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
2 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
3 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiff
4 asserts that the 319 current and former employees that comprise the Class can be identified based on
5 Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

6 **C. Common Issues of Law and Fact Predominate**

7 Predominance of common issues of law or fact does not require that the common issues be
8 dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
9 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the
10 necessity for class members to individually establish eligibility and damages does not mean individual
11 fact questions predominate.'" *Sav-On*, 34 Cal. 4th at 334.

12 Commonality exists if there is a predominant common legal question regarding how an
13 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
14 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
15 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
16 certification stage since the question is "essentially a procedural one that does not ask whether an action
17 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

18 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
19 common questions of whether the Defendant failed to provide meal and rest periods, whether class
20 members worked off the clock, whether Defendant's rounding complied with the law, whether
21 Defendant was required to provide expense reimbursement, and whether Class Members are entitled
22 to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendant disputes that
23 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

24 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

25 The typicality requirement requires the Plaintiff to demonstrate that the members of the class
26 have the same or similar claims as the Plaintiff. "The typicality requirement is met when the claims
27 of the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v.*
28 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth

1 Circuit held that “[u]nder the rule's permissive standards, representative claims are ‘typical’ if they are
2 reasonably coextensive with those of absent class members; they need not be substantially identical.”

3 In this case, Plaintiff contend that there can be little doubt that the typicality requirement is
4 satisfied. The Plaintiff, like every other member of the Class, worked for Defendant as non-exempt
5 employees during the Class Period. Plaintiff contends that, like every other member of the Class, she
6 were subject to the same practices and policies of Defendant and are subject to the same defenses. Thus,
7 Plaintiff asserts that the claims of the Plaintiff and the Class Members arise from the same course of
8 conduct by the Defendants, involve the same employment policies and practices of Defendant, and are
9 based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts
10 that the typicality requirement is met as to the common issues presented in this case. Defendant does
11 not oppose a finding of typicality for purposes of this Settlement only.

12 **E. The Class Representation Fairly and Adequately Protected the Class**

13 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
14 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
15 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
16 met here. First, Plaintiff is well aware of her duties as the representative of the Class and have actively
17 participated in the prosecution of this case to date. She effectively communicated with counsel,
18 provided documents to counsel and participated in the investigation and negotiations in the Action.
19 Second, Plaintiff retained competent counsel who are experienced in employment class actions and who
20 have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the
21 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under
22 the same set of facts and legal theories. Defendant disputes that the adequacy requirement is satisfied
23 but will not oppose such a finding for purposes of this Settlement only.

24 **F. The Superiority Requirement Is Met**

25 To certify a class, the Court must also determine that a class action is superior to other available
26 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
27 common issues will reduce litigation costs and promote greater efficiency, a class action may be
28 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.

1 1996). As courts have previously observed:

2 Absent class treatment, each individual plaintiff would present in separate, duplicative
3 proceedings the same or essentially the same arguments and evidence, including expert
4 testimony. The result would be a multiplicity of trials conducted at enormous expense
5 to both the judicial system and the litigants. “It would be neither efficient nor fair to
6 anyone, including defendants, to force multiple trials to hear the same evidence and
7 decide the same issues.”

8 *Sav-On*, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

9 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
10 as pled by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does not
11 dispute a finding of superiority in this action for purposes of this Settlement only.

12 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

13 The Court has broad discretion in approving a practical notice program. The Parties have
14 agreed upon procedures by which the Class Members will be provided with written notice of the
15 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
16 with the Agreement, Defendant will provide to the Settlement Administrator a confidential electronic
17 spreadsheet containing the Class Data. (Agreement at ¶ III(E)(2).) Within 14 days after receiving the
18 Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via
19 first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶
20 III(E)(2).)

21 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
22 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
23 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
24 impact on the rights of the Class Members if they do not opt out; (iii) information to the Class Members
25 regarding how to opt out and how to object to the Settlement; (iv) the estimated Settlement Share for
26 each of the Class Members; (v) the amount of attorneys’ fees and expenses to be sought; (vi) the
27 amount of the Plaintiff’s service award request; and (vi) the anticipated expenses of the Settlement
28 Administrator. Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have forty-five (45) days from the date
that the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement

1 at ¶ III(E)(3).) Class Members shall be given the opportunity to object to the Settlement and/or requests
2 for attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶
3 III(E)(3).) Class Members who do not submit a timely and proper request to opt-out will automatically
4 receive a payment of their Settlement Share. This notice program was designed to meaningfully reach
5 the Class Members and it advises them of all pertinent information concerning the Settlement. Decl.
6 Nordrehaug at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due
7 process and is the best notice practicable under the circumstances and complies with Rules of Court
8 3.766 and 3.769(f).

9
10 **VII. CONCLUSION**

11 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
12 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
13 fairness hearing for a date that is at least one hundred twenty (120) days from the date of Preliminary
14 Approval.

15 Dated: May 25, 2021

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

16
17 By: 

Kyle R. Nordrehaug, Esq.
Attorney for Plaintiff